

# EXHIBIT 40

Confidential



## Transcript of **Eda Daniel**

Saturday, April 9, 2022

***National Coalition on Black Civic Participation, et al. v. Jacob Wohl, et al.***

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Reference Number: 115308

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 NATIONAL COALITION ON BLACK  
5 CIVIC PARTICIPATION, MARY WINTER,  
6 GENE STEINBERG, NANCY HART,  
7 SARAH WOLFF, KAREN SLAVEN, KATE  
8 KENNEDY, EDA DANIEL, and ANDREA  
9 SFERES,

10 Plaintiffs,

11 -and-

12 People of the STATE OF NEW YORK, by its  
13 attorney general, LETITIA JAMES,  
14 ATTORNEY GENERAL OF THE STATE OF  
15 NEW YORK

16

17 v.

Civil Action No:

20-cv-8668 (VM) (OTW)

18

19 JACOB WOHL, JACK BURKMAN, J.M.  
20 BURKMAN & ASSOCIATES, LLC, PROJECT 1599,  
21 MESSAGE COMMUNICATIONS, INC., ROBERT  
22 MAHANIAN, and JOHN and JANE DOES 1-10.

23

Defendants.

-----x

24

25 EXAMINATION BEFORE TRIAL of the Plaintiff, EDA  
26 DANIEL, taken by the Defendant, pursuant to Court Order,  
27 held via REMOTE MEANS, on April 9, 2022, at 10:01 a.m.,  
28 before a Notary Public of the State of New York.

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30

\*CONFIDENTIAL\*

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1 A P P E A R A N C E S:

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17 BY: DAVID BRODY, ESQ.  
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1 Q. What were you studying?  
2 A. Counseling psychology.  
3 Q. Are you currently employed?  
4 A. I'm retired.  
5 Q. What did you do before you retired?  
6 A. I was an administrator at the Massachusetts  
7 Institute of Technology.  
8 Q. Wow. And how long were you in that position  
9 for?  
10 A. 10 years.  
11 Q. And how long have you been retired?  
12 A. Let's see, about 20.  
13 Q. Wow, congratulations.  
14 A. Thank you.  
15 Q. What is your race or ethnicity?  
16 A. I'm Eastern European Jewish.  
17 Q. Me too. Would you classify yourself as a  
18 Caucasian?  
19 A. Yes.  
20 Q. What are your current political affiliations?  
21 MR. GOLD: Objection. You can answer.  
22 A. I'm a registered Democrat.  
23 Q. And when you say "registered", does that mean  
24 you're registered to vote?  
25 A. Yes.

1 Q. And how long have you been registered to vote  
2 for?

3 A. Since I turned 18.

4 Q. And have you been registered as a Democrat that  
5 entire time?

6 A. Yes.

7 Q. And the address -- your current residence, is  
8 that the same address that you're registered to vote  
9 under?

10 A. Yes.

11 Q. And is that the same address that you were  
12 registered to vote under at the time of the November  
13 2020 Presidential election?

14 A. Yes.

15 Q. By the way, how long have you lived at your  
16 residence for?

17 A. About six and a half years.

18 Q. And prior to that, were you also in East  
19 Cleveland or did you live somewhere else?

20 A. I lived in Walden Massachusetts.

21 Q. Did you vote in the 2020 Presidential election?

22 A. Yes.

23 Q. Did you vote by mail or in person?

24 A. I voted in person.

25 Q. And where did you do that specifically?

1 Q. Prior to that phone call, did you know who Jack  
2 Burkman was?

3 A. I had no idea. I did not know him. Did not  
4 know the name.

5 Q. And what happened after you answered the call?

6 A. I was surprised that it was a robo call. I  
7 listened to the call. I was very surprised, I was  
8 actually shocked and a little frightened when they were  
9 talking about the police might try to contact you if you  
10 vote by mail, but I think anybody would be sort of  
11 surprised getting a phone call like that. Then I -- the  
12 part about the credit cards that they could find you if  
13 you have credit card debt, I immediately thought, well,  
14 that's not about me and then the part about getting  
15 vaccines, at that moment, I realized, oh, this was  
16 racist, this was to -- voter intimidation, this was to  
17 frighten people in my zip code in East Cleveland, and it  
18 made me very, very, angry. But in addition to that, it  
19 also left me a little -- kind of scared for a couple of  
20 weeks having such a pernicious call come into my home.  
21 We think of our homes as our sanctuary, and it was very  
22 distressing. It also has made me uncomfortable when the  
23 phone rings, I always look at caller ID, and even if it  
24 says a person's name, I'm still a little hesitant to  
25 pick up that phone until I've gone to hear the message

1 because I don't ever want to be subjected to that kind  
2 of nastiness in my own home. I don't want to be  
3 subjected to that again.

4 MR. KLEINMAN: Okay. I want to go back  
5 and review a few of the things that you just  
6 said. So Aaron, do you have a copy of the  
7 Complaint printed out or do you want me to pop  
8 it up? I'll probably pop it up any way, but  
9 it's up to you.

10 MR. GOLD: We have a printed copy of  
11 the Complaint right next to Ms. Daniel.

12 MR. KLEINMAN: Perfect. I will put it  
13 up on the screen for everybody else's benefit  
14 and my own.

15 Q. I'm putting on the screen now what was marked  
16 at a deposition on April 8th as Defendant's Exhibit B.  
17 Do you -- well, I'll tell you what, I'll scroll at the  
18 beginning, do you recognize this document at all Ms.  
19 Daniel?

20 A. Yes, I do.

21 Q. Great. What do you recognize it to be?

22 A. I recognize it to be a Complaint in the United  
23 States District Court. Of -- against Jacob Wohl and  
24 Jack Burkman.

25 Q. Have you seen this document before today?

1 the Black community perceives this call?

2 MR. GOLD: Objection.

3 A. In a word, no. But this is not really a  
4 question that one can answer with a yes, no answer.

5 Q. Well, your opinion is based on your assumption  
6 about how the Black community would feel about this  
7 call; is that not correct?

8 A. My opinion is based on conversations I've had  
9 with Black friends about other things, nothing to do  
10 with this call and from reading that I've done my entire  
11 life about tactics used against Black people.

12 Q. So your opinion on how the Black community  
13 would perceive this call is based on an assumption,  
14 correct?

15 MR. GOLD: Objection.

16 A. I'm -- I really am -- an assumption means that  
17 there's been no education or learning or experience  
18 behind something and one just makes -- has a belief  
19 system based on no evidence. One -- an intelligent  
20 person can look at something like the text of this call,  
21 can also know -- I personally know how this call  
22 impacted and affected me emotionally and to know that  
23 this would not play well amongst other people,  
24 particularly Black people.

25 Q. And you don't believe that your opinion on how

1 A. My expectation when I saw the caller ID was  
2 that there was going to be a human being talking at the  
3 other end of the line when I picked up. And instead  
4 what I got was a very fast succinct mischief that made  
5 threats about voting by mail information being used as a  
6 way for the police to track me, that credit card  
7 companies would collect outstanding debts based on that  
8 information and the CDC would also use these records for  
9 mandatory vaccines. And all of this was shocking and  
10 untrue and scary and so I was -- it just made me very  
11 uncomfortable, very scared until I realized that I was  
12 not really the target of this robo call and then it made  
13 me angry. But, as I said before, there have been  
14 lingering cautions that I have taken because of this  
15 robo call. Specifically, even when I see my caller ID  
16 come up with a person's name, I don't immediately answer  
17 the phone unless I recognize that -- unless that person  
18 is a friend of mine and known to me. I no longer pick  
19 up the phone immediately. I wait to hear what is at the  
20 other end.

21 Q. How long did it take you to recognize the  
22 statements in the robo call were allegedly false?

23 MR. GOLD: Objection.

24 A. When it got to the second part about  
25 outstanding debt collection, I knew that this could not

1 Q. And I know you testified in quite some detail  
2 about it, but I just want to be clear, at the time you  
3 received the robo call, were you personally intimidated  
4 by it?

5 MR. GOLD: Objection.

6 A. I was frightened for a moment until I realized  
7 that this was not -- that I was not the target.

8 Q. Is it fair to say that you were able to see  
9 through the alleged intimidation of the robo call?

10 A. Yes, I was able to see through it, which is why  
11 I was so angry that this was happening.

12 Q. At the time you received the robo call, did you  
13 believe that members of the Black community would not be  
14 able to see through this alleged intimidation?

15 MR. GOLD: Objection.

16 A. That never occurred to me.

17 Q. Did you feel threatened by the robo call?

18 A. I think I've already testified to the answer  
19 being yes, the first part with the police departments  
20 will track down old warrants, I do not have any warrants  
21 old or new. But when one is saying that -- when one  
22 picks up the phone -- when I picked up the phone, I did  
23 not expect to get this kind of a call. There's no  
24 introduction in terms of preparing -- there's know way  
25 to be prepared to receive a phone call like this.

1                   about. So the information would have come from the  
2                   lawyers or anybody else in the lawsuit, but not from me.

3                   Q.           So you have no independent knowledge to  
4                   substantiate that particular allegation?

5                   A.           Correct.

6                   Q.           Looking at the next paragraph, paragraph 100  
7                   also on page 24, just take a minute to read that to  
8                   yourself, please.

9                   A.           Okay.

10                  Q.           What irreparable harm, if any, have you faced  
11                  as a result of the robo call?

12                  MR. GOLD: Objection. Calls for a  
13                  legal conclusion.

14                  A.           Irreparable, could you define that for me?

15                  Q.           Can never be repaired. Permanent.

16                  A.           I don't know that anything is irreparable. I  
17                  do know that I continue to be uncomfortable with names  
18                  that I don't recognize, but I don't feel that this -- as  
19                  I said before, life brings issues to us and so it's just  
20                  another one of those things that makes -- is an  
21                  intrusion into one's happiness.

22                  Q.           In your personal opinion, did the robo call  
23                  cause irreparable harm to anybody?

24                  MR. GOLD: Objection.

25                  A.           I can't possibly know that.

1 Q. Do these type of intrusions happen in your life  
2 every day?

3 A. No.

4 Q. Every month?

5 A. No.

6 Q. Has any type of intrusion at this level  
7 happened to you since you received the robo call?

8 A. No.

9 Q. Earlier you testified in your participating in  
10 get out the vote efforts, correct?

11 A. Yes.

12 Q. Can you describe some more of that work for us?

13 A. It's very basic. It's knocking on doors, just  
14 going up to people's homes, leaving literature, if  
15 they're home, helping answer their questions. It's just  
16 a lot of foot work.

17 Q. And why do you do this work?

18 A. Because I feel it's very, very, important that  
19 people vote. It was something that was -- when I was a  
20 kid, my father always took me with him to vote. I  
21 remember going probably starting at age 5. And it just  
22 seemed that it was a sacred part of our democracy. And  
23 I believe strongly in democracy.

24 Q. And how many hours do you think that you've  
25 spent on your voter canvassing efforts?

1 A. I can't even begin to put a number on it, but  
2 it's in the hundreds. Over the course of my life, in  
3 the thousands.

4 Q. And how did the robo call that you received  
5 make you feel about the work that you had done as a  
6 canvasser?

7 A. I felt diminished because it was directly  
8 opposing something that I value very highly.

9 Q. Why was it directly opposing what you valued  
10 very highly?

11 A. It was trying to tell people not to vote and  
12 that is appalling to me.

13 Q. Now earlier you were played the curative robo  
14 call that was issued by the Defendants in this case,  
15 correct?

16 A. Yes.

17 Q. Do you recall the voice that you heard?

18 A. You know, I don't recall, whether it was male  
19 or female.

20 Q. Was it a computerized generated?

21 A. I don't think so. If it was, it was a very  
22 good one.

23 Q. Are you talking about the robo call or the  
24 curative call?

25 A. The curative call.

1

## C E R T I F I C A T E

2

3                   I, BROOKE E. PERRY, hereby certify that the  
4                   Examination Before Trial of EDA DANIEL was held before  
5                   me on the 9th day of April, 2022; that said witness was  
6                   duly sworn before the commencement of her testimony;  
7                   that the testimony was taken stenographically by myself  
8                   and then transcribed by myself; that the party was  
9                   represented by counsel as appears herein;  
10                  That the within transcript is a true record of the  
11                  Examination Before Trial of said witness;

12                  That I am not connected by blood or marriage  
13                  with any of the parties; that I am not interested  
14                  directly or indirectly in the outcome of this matter;  
15                  that I am not in the employ of any of the counsel.

16                  IN WITNESS WHEREOF, I have hereunto set my  
17                  hand this 9th day of April, 2022.

18

*Brooke E. Perry*

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BROOKE E. PERRY

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